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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,371	04/25/2001	Diane C. Breidenbach		6561

7590 03/17/2005  
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EXAMINER

NGUYEN, TUAN N

ART UNIT PAPER NUMBER

3751

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/842,371

Applicant(s)

BREIDENBACH ET AL.

Examiner

Tuan N. Nguyen

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: The continuation data in the first paragraph of page 1 is incomplete; therefore, the continuation is not granted since neither the first paragraph of the specification nor the Oath or Declaration filed is claiming continuation to any specific prior co-pending application. Furthermore, "Figure 5" on the fourth line up from the bottom of page 6 should be --Figure 3--. Finally, "applicator 25" on lines 2 and 4 of page 11 should be --applicator 22--.

Appropriate correction is required.

### ***Claim Objections***

2. Claims 8-33 and 36-41 are objected to because of the following informalities: "the receptacle having a rollerball applicator" in claims 8, 11, 17, 21, 26, and 36-41 should be -- the receptacle having the rollerball applicator-- since the rollerball applicator has already been claimed in independent claim 1. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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3. Claims 1-7, 11-27, 29 and 32-41 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,276,853 (hereinafter Breidenbach).

Breidenbach discloses a dual ended container comprising a sleeve that has a first end, a second end, a first section and a second section having a conventional thread cap insert in the sleeve such that the caps are in a head to head relationship; each of the ends being adapted to receive a receptacle for containing a product and wherein the product in the first receptacle is different from the product in the second receptacle and both of the receptacles has a rollerball applicator for dispensing product from that receptacle. The other claimed features are clearly anticipated by Breidenbach. Furthermore, the intended use with different product and all other functional phrases have been carefully considered but are deemed not to describe any structure patentably distinguishable over the device that disclosed by Breidenbach which is certainly capable of being used in the claimed manner.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 8-10, 28, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breidenbach, as discussed above, in view of Montoli.

Breidenbach further discloses, on lines 36-40 of col. 3, that the applicator bottles may have rollerball applicator as shown or may optionally include other type of

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applicators means. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ, on the Breidenbach device, a doe foot applicator or a mascara brush applicator (if not already) as, for example, taught by Montoli.


**Conclusion**

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dumler et al., Balzarini, Costa, and Roehrich disclose dual ended container.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine R. Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Tuan Nguyen  
Primary Examiner  
Art Unit 3751  
3/16/05

TN